

to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with E.O. 11246, rules and regulations of the Secretary of Labor, and applicable clauses in the contract.

(5) *Facilities not connected with contracts.* The Deputy Assistant Secretary may exempt from the requirements of E.O. 11246 any of a contractor's facilities that the Deputy Assistant Secretary finds to be in all respects separate and distinct from activities of the contractor related to performing the contract, provided, that the Deputy Assistant Secretary also finds that the exemption will not interfere with, or impede the effectiveness of, E.O. 11246.

(6) *Indefinite-quantity contracts.* With respect to indefinite-quantity contracts and subcontracts, the Equal Opportunity clause applies unless the contracting officer has reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The applicability of the Equal Opportunity clause shall be determined by the contracting officer at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the Equal Opportunity clause shall be applied to the contract whenever the amount of a single order exceeds \$10,000. Once the Equal Opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration regardless of the amounts ordered, or reasonably expected to be ordered, in any year.

(7) *Contracts with religious entities.* Pursuant to E.O. 13279, Section 202 of E.O. 11246, shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to

perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in the order.

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the contracting officer shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O. 11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the Deputy Assistant Secretary for approval.

(d) The Deputy Assistant Secretary may withdraw the exemption for a specific contract, or group of contracts, if the Deputy Assistant Secretary deems that such action is necessary and appropriate to achieve the purposes of E.O. 11246. Such withdrawal shall not apply—

(1) To contracts awarded before the withdrawal; or

(2) To any sealed bid contract (including restricted sealed bidding), unless the withdrawal is made more than 10 days before the bid opening date.

[48 FR 42258, Sept. 19, 1983, as amended at 52 FR 19803, May 27, 1987; 63 FR 70284, 70285, Dec. 18, 1998; 72 FR 13588, Mar. 22, 2007]

22.808 Complaints.

Complaints received by the contracting officer alleging violation of the requirements of E.O. 11246 shall be referred immediately to the OFCCP regional office. The complainant shall be advised in writing of the referral. The contractor that is the subject of a complaint shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70285, Dec. 18, 1998]

22.809 Enforcement.

Upon the written direction of the Deputy Assistant Secretary, one or more of the following actions, as well

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as administrative sanctions and penalties, may be exercised against contractors found to be in violation of E.O. 11246, the regulations of the Secretary of Labor, or the applicable contract clauses:

(a) Publication of the names of the contractor or its unions.

(b) Cancellation, termination, or suspension of the contractor's contracts or portion thereof.

(c) Debarment from future Government contracts, or extensions or modifications of existing contracts, until the contractor has established and carried out personnel and employment policies in compliance with E.O. 11246 and the regulations of the Secretary of Labor.

(d) Referral by the Deputy Assistant Secretary of any matter arising under E.O. 11246 to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 70285, Dec. 18, 1998]

22.810 Solicitation provisions and contract clauses.

(a) When a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, the contracting officer shall insert—

(1) The clause at 52.222-21, Prohibition of Segregated Facilities, in the solicitation and contract; and

(2) The provision at 52.222-22, Previous Contracts and Compliance Reports, in the solicitation.

(b) The contracting officer shall insert the provision at 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction, in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of \$10,000.

(c) The contracting officer shall insert the provision at 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation, in solicitations other than those for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of

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the contract is expected to be \$10 million or more.

(d) The contracting officer shall insert the provision at 52.222-25, Affirmative Action Compliance, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity.

(e) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless the contract is exempt from all of the requirements of E.O. 11246 (see 22.807(a)). If the contract is exempt from one or more, but not all, of the requirements of E.O. 11246, the contracting officer shall use the clause with its *Alternate I*.

(f) The contracting officer shall insert the clause at 52.222-27, Affirmative Action Compliance Requirements for Construction, in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, when the amount of the contract is expected to be in excess of \$10,000.

(g) The contracting officer shall insert the clause at 52.222-29, Notification of Visa Denial, in contracts that will include the clause at 52.222-26, Equal Opportunity, if the contractor is required to perform in or on behalf of a foreign country.

[48 FR 42258, Sept. 19, 1983, as amended at 50 FR 23606, June 4, 1985; 52 FR 19803, May 27, 1987; 63 FR 34060, June 22, 1998; 63 FR 70285, Dec. 18, 1998]

Subpart 22.9—Nondiscrimination Because of Age

22.901 Policy.

Executive Order 11141, February 12, 1964 (29 FR 2477), states that the Government policy is as follows:

(a) Contractors and subcontractors shall not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(b) Contractors and subcontractors, or persons acting on their behalf, shall